

§ 1.356-2 Receipt of additional consideration not in connection with an exchange.

(a) If, in a transaction to which section 355 would apply except for the fact that a shareholder (individual or corporate) receives property permitted by section 355 to be received without the recognition of gain, together with other property or money, without the surrender of any stock or securities of the distributing corporation, then the sum of the money and the fair market value of the other property as of the date of the distribution shall be treated as a distribution of property to which the rules of section 301 (other than section 301(b) and section 301(d)) apply. See section 358 for determination of basis of such other property.

(b) Paragraph (a) of this section may be illustrated by the following examples:

Example (1). Individuals A and B each own 50 of the 100 outstanding shares of common stock of Corporation X. Corporation X owns all of the stock of Corporation Y, 100 shares. Corporation X distributes to each shareholder 50 shares of the stock of Corporation Y plus \$100 cash without requiring the surrender of any shares of its own stock. The \$100 cash received by each is treated as a distribution of property to which the rules of section 301 apply.

Example (2). If, in the above example, Corporation X distributes 50 shares of stock of Corporation Y to A and 30 shares of such stock plus \$100 cash to B without requiring the surrender of any of its own stock, the amount of cash received by B is treated as a distribution of property to which the rules of section 301 apply.

§ 1.356-3 Rules for treatment of securities as “other property”.

(a) As a general rule, for purposes of section 356, the term *other property* includes securities. However, it does not include securities permitted under section 354 or section 355 to be received tax free. Thus, when securities are surrendered in a transaction to which section 354 or section 355 is applicable, the characterization of the securities received as “other property” does not include securities received where the principal amount of such securities does not exceed the principal amount of securities surrendered in the transaction. If a greater principal amount of securities is received in an exchange

described in section 354 (other than subsection (c) or (d) thereof) or section 355 over the principal amount of securities surrendered, the term *other property* includes the fair market value of such excess principal amount as of the date of the exchange. If no securities are surrendered in exchange, the term *other property* includes the fair market value, as of the date of receipt, of the entire principal amount of the securities received.

(b) Except as provided in § 1.356-6, for purposes of this section, a right to acquire stock that is treated as a security for purposes of section 354 or 355 has no principal amount. Thus, such right is not other property when received in a transaction to which section 356 applies (regardless of whether securities are surrendered in the exchange). This paragraph (b) applies to transactions occurring on or after March 9, 1998.

(c) In the examples in this paragraph (c), stock means common stock and *warrants* means rights to acquire common stock. The following examples illustrate the rules of paragraph (a) of this section:

Example 1. A, an individual, exchanged 100 shares of stock for 100 shares of stock and a security in the principal amount of \$1,000 with a fair market value of \$990. The amount of \$990 is treated as “other property.”

Example 2. B, an individual, exchanged 100 shares of stock and a security in the principal amount of \$1,000 for 300 shares of stock and a security in the principal amount of \$1,500. The security had a fair market value on the date of receipt of \$1,575. The fair market value of the excess principal amount, or \$525, is treated as “other property.”

Example 3. C, an individual, exchanged a security in the principal amount of \$1,000 for 100 shares of stock and a security in the principal amount of \$900. No part of the security received is treated as “other property.”

Example 4. D, an individual, exchanged a security in the principal amount of \$1,000 for 100 shares of stock and a security in the principal amount of \$1,200 with a fair market value of \$1,100. The fair market value of the excess principal amount, or \$183.33, is treated as “other property.”

Example 5. E, an individual, exchanged a security in the principal amount of \$1,000 for another security in the principal amount of \$1,200 with a fair market value of \$1,080. The fair market value of the excess principal amount, or \$180, is treated as “other property.”

Example 6. F, an individual, exchanged a security in the principal amount of \$1,000 for two different securities each in the principal amount of \$750. One of the securities had a fair market value of \$750, the other had a fair market value of \$600. One-third of the fair market value of each security (\$250 and \$200) is treated as "other property."

Example 7. G, an individual, exchanged stock for stock and a warrant. The warrant had no principal amount. Thus, G received no excess principal amount within the meaning of section 356(d).

Example 8. H, an individual, exchanged a warrant for stock and a warrant. The warrants had no principal amount. Thus, H received no excess principal amount within the meaning of section 356(d).

Example 9. I, an individual, exchanged a warrant for stock and a debt security. The warrant had no principal amount. The debt security had a \$100 principal amount. I received \$100 of excess principal amount within the meaning of section 356(d).

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§ 1.356-4 Exchanges for section 306 stock.

If, in a transaction to which section 356 is applicable, other property or money is received in exchange for section 306 stock, an amount equal to the fair market value of the property plus the money, if any, shall be treated as a distribution of property to which section 301 is applicable. The determination of whether section 306 stock is surrendered for other property (including money) is a question of fact to be decided under all of the circumstances of each case. Ordinarily, the other property (including money) received will first be treated as received in exchange for any section 306 stock owned by a shareholder prior to such transaction. For example, if a shareholder who owns a share of common stock (having a basis to him of \$100) and a share of preferred stock which is section 306 stock (having a basis to him of \$100) surrenders both shares in a transaction to which section 356 is applicable for one share of common stock having a fair market value of \$80 and one \$100 bond having a fair market value of \$100, the bond will be deemed received in exchange for the section 306 stock and it

will be treated as a distribution to which section 301 is applicable to the extent of its entire fair market value (\$100).

§ 1.356-5 Transactions involving gift or compensation.

With respect to transactions described in sections 354, 355, or 356, but which—

(a) Result in a gift, see section 2501 and following, and the regulations pertaining thereto, or

(b) Have the effect of the payment of compensation, see section 61(a)(1), and the regulations pertaining thereto.

§ 1.356-6 Rules for treatment of non-qualified preferred stock as other property.

(a) *In general.* For purposes of §§ 1.354-1(e), 1.355-1(c), and 1.356-3(b), the terms *stock* and *securities* do not include—

(1) Nonqualified preferred stock, as defined in section 351(g)(2), received in exchange for (or in a distribution with respect to) stock, or a right to acquire stock, other than nonqualified preferred stock; or

(2) A right to acquire such nonqualified preferred stock, received in exchange for (or in a distribution with respect to) stock, or a right to acquire stock, other than nonqualified preferred stock.

(b) *Exceptions.* The following exceptions apply:

(1) *Certain recapitalizations.* Paragraph (a) of this section does not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation as described in section 354(a)(2)(C)(ii)(II).

(2) *Transition rule.* Paragraph (a) of this section does not apply to a transaction described in section 1014(f)(2) of the Taxpayer Relief Act of 1997 (111 Stat. 921).

(c) *Effective date.* This section applies to nonqualified preferred stock, or a right to acquire such stock, received in connection with a transaction occurring on or after March 9, 1998.

[T.D. 8753, 63 FR 411, Jan. 6, 1998. Redesignated by T.D. 8882, 65 FR 31078, May 16, 2000]